

Call to Order:

The meeting was called to order at 7:37 p.m. Present were Chairman, Paul Salafia, and members, Linn Anderson, Vincent Chiozzi, Joan Duff, John McDonnell, and associate member Mark Yanowitz; also present was Paul Materazzo, Director of Planning and Jacki Byerley, Planner.

Reynolds Street:

The Board opened the Public Hearing on an application by James and Bernadette Lyons requesting that the Board rescind the approval for the subdivision known as Reynolds Street. Ms. Duff recused herself from the discussion and left the room. Chairman Salafia reviewed the policy for this evening's meeting, stating that he would give each attorney ten minutes to summarize their arguments, after which he would take questions from the Board. He stated that he would not be taking any comments from the audience. Attorney Corrina Hale, representing the petitioner, summarized their reasons why the Board should rescind the subdivision approval. Her points were that the appeal for the subdivision was settled in 2007, the developer failed to submit definitive plans for endorsement and recording as required in the conditions of approval; the appeal of the Ballardvale Historic Commission did not cause delay to the six month recording deadline; and land court did not cause the delay, the missed deadline was self-imposed. Attorney Hale stated the paved roadway to the Stier lot was not approved. She also stated that the applicant has requested two modifications to the plans. Mr. McDonnell questioned if an owner of a property has the right to improve a private way and use a way throughout its entire way. Attorney Hale stated the roadway was not approved and does not provide adequate access and the developer is in violation of the conditions of approval. Attorney Hale stated the main basis to rescind approval is that it won't cause any prejudice to the applicant and the approval itself should be rescinded.

Attorney Donald Borenstein, representing Vale Realty Trust, noted that rescinding an approval is severe; he also noted that after searching court records there are no rescission recorded where a Planning Board rescinded a plan on a petition by person of interest because the abutter does not like the subdivision. Ms. Anderson questioned when the work on the roadway began. Attorney Borenstein stated after the appeal of the subdivision in 2005 the applicant exercised his right to improve a way to build out the Stier lot. Ms. Anderson asked to what standard was the roadway constructed. William Johnson of Vale Realty Trust noted that he had a preconstruction meeting and received 6 items for the construction standards and noted other than the sewer line that was installed the width and gravel base is the same standards as the Planning Board's conditions of approval. Attorney Borenstein gave an overview of the history of the Reynolds Street subdivision;

2004 Filed subdivision;

2005 Subdivision approved and appealed

2005 Appealed dismissed; appealed again dismissed 2007

2007 Ballardvale approved and approval appealed to MVPC

2008 Appealed MVPC rejection of appeal

2008 Land Court final revision to plans and signatures

2009 Submits plans for endorsement

Ms. Anderson asked what plan they were talking about. Ms. Byerley noted that the applicant did request two minor modifications but the Board never acted upon either request. Attorney Borenstein noted that the Land Court required two revisions to the plans- they added bounds.

Reynolds Street (cont.):

Ms. Byerley stated that staff endorses the plan and always checks the measurements and bounds. Mr. McDonnell reviewed the Land Court's process of approving plans. The Board reviewed the plans in exhibits one and two of the applicant's request to rescind the subdivision approval. Ms. Byerley reviewed the exhibits one and two; she reviewed what type of plans get recorded at the registry of deeds. Mr. Chiozzi asked Attorney Borenstein what was his position on time limits. Attorney Borenstein noted that a plan must be recorded at the Registry of Deeds within 6 months of endorsement but he does not believe the six month deadline is applicable in this instance. Attorney Thomas Ubelis, Town Counsel, reviewed the issue in the Anderson case and noted that the Zoning Board of Appeals decision was appealed and is still being heard. Mr. McDonnell asked Attorney Hale if the Board rescinded the approval what was their ultimate goal. Attorney Hale under G.L. Ch. 41 Sec. 81X wants the Board to rescind the approved plan. Attorney Borenstein reviewed a letter dated April 13, 2010 from Timothy Barash submitted to the Board today stating that some of his personal and confidential documents were included in the petition to rescind. Mr. Barash's letter stated that he did not give permission for these documents to be used, and he would like them removed or not considered during the Board's deliberations. Attorney Hale noted that Mr. Barash had e-mailed the information to Julie MacLeod which would preclude any confidentially arguments.

On a motion by Ms. Anderson seconded by Mr. McDonnell the Board voted to close the public hearing on an application by James and Bernadette Lyons requesting the Board to rescind the approval for the subdivision known as Reynolds Street. **Vote** Unanimous (4-0)

It should be noted Ms. Duff returned to the meeting after the vote

Bancroft School Update:

Mark Johnson, Chair of the School Building Committee, acting on behalf of the School Building Committee (SBC), noted the SBC has been working on a feasibility study since 2008 and noted that the SBC will be filing for a Site Plan Review for the proposed new school. He also gave a brief overview of the proposed site, which included an aerial plan view showing the areataken by the town in the 1960's. Mr. Johnson reviewed the fees taken in Holt Road and West Knoll Rd. Lauren McKee, of SMMA, gave a brief overview of the feasibility study, the scope and funding, and she noted MSPA must approve the study before it can go to design. A representative from SMMA reviewed a PowerPoint Presentation, which included the existing school needs and the three options for the site. Another SMMA representative gave an overview of the existing school, access, parking, playground areas, fields, emergency vehicle access and wetlands. Mr. Johnson reviewed the main access to the site, the design and noted that the Fire Department wants access off of West Knoll Rd. because it is a straight shot to South Main Street. Mr. Johnson also indicated on the plan the abutters to the project. He stated that the current Bancroft School enrollment is 469 students, and the proposed enrollment is 680 students, grades K-5. Tim Vale, of 9 Bancroft Road, questioned the Planning Board's process regarding landscaping, drainage and traffic. Mr. Yanowitz asked if there was any flexibility with the State in revising the plan. Mr. Johnson noted they do have flexibility with the State until after the schematic design. Ms. Anderson asked if the Dover Amendment was explained or discussed at any of the SBC meetings. Mr. Johnson said it was not. An abutter at 159 Holt Road expressed concern regarding the protection of the wetlands and the fact that the design requires taking down trees in a forested area. Joe Piantedosi, Director of Plant and Facilities, noted that the new fields planned for Bancroft School will replace the existing fields at Bancroft; the plan minimized the cutting

Bancroft School Update (cont.):

of any green space. Mr. Piantedosi noted that there are no other options for the fields in town. Mr. McDonnell noted that Mr. Piantedosi is doing a great job with the fields in town; he also stated that the fields in town are scarce, and we need to accommodate the children in town.

Town Yard:

Joe Piantedosi, Director of Plant and Facilities reviewed the business plan for the relocation of the Town Yard to 146 Dascomb Road, which included the topics of the debt exclusion article, the revenue that will help pay down the debt and the cost. He noted that the cost is \$90.49 per s.f., whereas the cost for new construction would be estimated at \$305 a s.f. Mr. Piantedosi also noted that by moving the entire Plant and Facilities division, costs will be cut and the equipment will last longer, since it will be stored indoors. The Board discussed the merits of the relocation of the Town yard and reviewed suggestions for a presentation for Town Meeting.

Arbor Lane:

The Board opened the public hearings that were continued from the Mar. 30th meeting on an application by Fieldstone Meadows Development Corp. for a Definitive Subdivision Plan and a Special Permit for Earth Movement entitled Arbor Lane located at Acorn Drive and Clark Road. William MacLeod of Andover Consultants, representing the applicant, gave an overview of the proposed changes and noted they have covered all outstanding items with ESS Group and DPW. Jacki Byerley reviewed her memo to the Board dated April 9, 2010 and DPW's recommendation. Ms. Byerley noted that the revised Operation and Maintenance plan and subdivision plan was received today and is waiting for comments from DPW.

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to continue the public hearings on an application by Fieldstone Meadows Development Corp. for a Definitive Subdivision Plan and a Special Permit for Earth Movement entitled Arbor Lane located at Acorn Drive and Clark Road until May 11, 2010 at 7:30 p.m. **Vote** Unanimous (5-0)

Warrant Article 39 (also known as P-43):

The Board opened the discussion that was continued from the March 30th meeting on a warrant articles P-43 to amend the Wetland Protection By-law Article XIV, Section XIV, Section 5, Fees. This warrant article would remove the Conservation Commission's existing fee structure and allow the commission to be consistent with the state's language regarding the charging of fees. Mr. Douglas, Director of Conservation, reviewed his memo to the Board, dated April 9, 2010, which included the State Law language as well as the reasoning behind the proposed change. Howard Kessler, a Conservation Commissioner, noted the Commissioners do not have the expertise to deal with all the aspects of wetlands and rely on consultants to review projects, especially during big rain events. Mr. Douglas reviewed the current fees structure for peer reviews, as outlined in the Conservation Rules and Regulations, which were put together eleven (11) years ago. He noted that costs have gone up over the years.

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to close the discussion a warrant articles A-39 to amend the Wetland Protection By-law Article XIV, Section XIV, Section 5, Fees which would remove the Conservation Commission's existing fee structure and allow the commission to be consistent with the state's language regarding the charging of fees. **Vote** Unanimous (5-0)

Warrant Article 39 (also known as P-43) (cont.):

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to recommend approval of Article 39 also known as P-43. **Vote** Unanimous (5-0)

Celestial Circle:

The Board opened the deliberations on an application by Rayvon Realty Trust for a nine lot Definitive Subdivision Plan, entitled Celestial Circle, and a Special Permit for a Cluster Development and a Special Permit for Earth Movement, located off Sunset Rock Road. Chairman Salafia gave an overview of the previous deliberation meeting; the Board has had a chance to review the conditions, but Chairman Salafia wants the Board to be comfortable with the conditions as written.

The Board reviewed Ms. Byerley's memo dated April 12, 2010 to the Board, which included the recommended draft conditions. Following a detailed discussion the Board suggested the following changes:

Condition # 25 in the 2nd sentence changes section 24i to 25i;

Condition # 37 in the 3rd sentence at the end of the sentence add "and signed".

On a motion by Ms. Anderson seconded by Mr. McDonnell the Board voted to approve the following waivers as they are in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law as stated below;

Article XIII, Sec III.E.3.c-Original Mylars;

Article XIII, Sec. VI.E.2-reduction in width of water easement from 20';

Article XIII, Sec. VI.D.-elimination of sidewalks; and

Article XIII, Sec. VII.N & O allowing the use of porous pavement

Article XIII, Sec. VI.E.2.6. allowance of private easements

Ms. Anderson further moved that the explanation of why the waivers are approved will be as expanded in the "motion to approve waivers" page of Linn Anderson's memo to the Board dated April 13, 2010. **Vote** Unanimous (5-0)

On a motion by Ms. Anderson seconded by Mr. McDonnell the Board voted to amend conditions # 25, #54 and # 37:

#25 the 2nd sentence shall read: "The account referred to in section 25i shall have been established and funded in a manner prescribed by the town."

37 the sentence that says "Access over lot 4 shall be clearly delineated on the ground shall be changed to read Access over lot 4 shall be clearly delineated on the ground and signed." #54 the last sentence shall read: "The Town, recycling and trash vendors will be held harmless against any maintenance claims against them for damage occurring to the private way." **Vote**

Unanimous (5-0)

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board found that the Celestial Circle Definitive Subdivision Plan, as amended by a prior motion, is in conformance with the Subdivision Control Law, the Rules and Regulations Governing the Subdivision of Land in the Town of Andover, the recommendations of the Board of Health and also complies with the applicable provisions of the Andover Zoning By-law; it was further moved that the Board vote to accept the expanded language, which articulated why as stated in a memo to the Planning Board dated April 13, 2010. **Vote** Unanimous (5-0)

Celestial Circle (cont.):

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board found that the disposition of lots and buildings under this particular allocation fulfills the requirements of Section 7.1. of the Andover Zoning By-law, the requirements of a Special Permit to Cluster Development for the reasons stated in Jacki Byerley's memo to the Board dated April 12, 2010.

Vote Unanimous (5-0)

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board found that the cluster subdivision as a whole makes the best feasible design of existing topography and complies with the requirements of Section 6.3 of the Andover Zoning By-laws, as well as Section 9.4 of the Andover Zoning By-law, for the reasons stated in Ms. Byerley's memo to the Board dated April 12, 2010. **Vote** Unanimous (5-0)

Therefore, in consideration of all the material presented, testimony received, discussions and deliberation by the Board; Ms. Anderson made a motion, which was seconded by Mr. McDonnell, that the Board vote to approve with conditions as amended the application for a Definition Subdivision Plan, Special Permit for Cluster Development and the Special Permit for Earth Movement entitled "Celestial Circle." This motion to approve with conditions is subject to the 55 conditions stated in Jacki Byerley's memo to the Board dated April 12, 2010. **Vote** Unanimous (5-0)

Adjournment: The Board voted to adjourn the meeting at 10:10 p.m.